IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 770 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTILAL KUBERDAS SHARMA
Versus
STATE OF GUJARAT

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Appearance :
MR ATUL H MEHTA for Appellant
MR A.Y. KOGJE APP for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 23 & 24/08/2006

ORAL JUDGMENT

1 The instant Appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 and is directed against the

judgment and order delivered on 30th of September, 1991, in Special Case No. 5 of 1988 of the Court of learned Special Judge, District – Panchmahals at Godhra. The present appellant being accused of said Special Case No. 5 of 1988, came to be convicted for the offences punishable under Section 5(1)(d) to read with Section 5(2) of the Prevention of the Corruption Act, 1947 and also for the offence punishable under Section 161 of the Indian Penal Code. Vide impugned judgment and order, the learned Special Judge was pleased to sentence the present appellant to undergo RI for one year and fine of Rs. 2,000/-, in default, to undergo RI for six months for the offence punishable under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act, 1947, while no separate sentence was awarded for the offence punishable under Section 161 of the Indian Penal Code.

2 The facts leading to the prosecution against the appellant can shortly be depicted as under :

The present complainant Atmaram Solanki was working as Head Constable at Garadu Outpost of Zalod Police Station in 1980. A departmental proceedings came to be initiated against him by Police Sub-Inspector in pursuance of an application and in the said proceedings by disciplinary authority, he was exonerated on 21st of July 1983. This proceedings were in respect of allegations of demanding bribe by complainant. Before this departmental

proceedings, one more departmental proceedings came to be initiated against the complainant for insubordination in respect of evading the orders of superior officer and in respect of this departmental proceedings, disciplinary authority i.e. concerned D.S.P. Punished the complainant vide order dated 5th of April, 1984 and he was directed to undergo punishment of reduction in rank and was ordered to serve as Police Constable for six months. While he was serving as Police Constable as such, in earlier departmental proceedings in pursuance of one application of bribe though he was exonerated by disciplinary authority, the higher authority i.e. D.I.G., Baroda, punished the complainant and he was dismissed from service from 7th of April, 1984. The complainant resorted to hierarchical appeals and representations and remedies and ultimately the final authority i.e. the Government of Gujarat directed to reinstate the complainant in service vide Order dated 01st of October, 1985 and thus in departmental proceedings where he was dismissed, came to be reinstated. Though in other departmental proceedings wherein the complainant was reduced to a rank remained final. On coming to know that the State Government allowed the Appeal of the complainant and ordered him to reinstate, the complainant Atamaram Shankarbhai Solanki visited DSP office at Godhra on 7th of October, 1985. The present appellant at the relevant juncture was working as Sheet Branch Clerk and was dealing with the departmental proceedings and, therefore, the complainant met him on 7th of October, 1985, in DSP

Office. Appellant informed the complainant that since the State Government has directed to regulate the absence of the complainant from duty as against his leave at his credit, after calculating the said period and regulating it and counting the period of reversion, the complainant would be given an order of posting of Head Constable as early as possible and for doing so, the appellant demanded bribe of Rs. 500/- from the complainant. Complainant informed the appellant that after the orders were passed, he would see the appellant. Again complainant visited DSP office on 11th of October, 1985 and his order of reinstatement and posting as Constable was given to him by the appellant. The complainant obtained this order from registry Clerk signing in the Outward Register and those orders were handed over to the complainant. Appellant on that day reiterated his demand of bribe of Rs. 500/- and informed to the complainant that if complainant wanted order of posting of Head Constable, he would have to pay Rs. 500/- to the appellant as bribe. It was further stated by the appellant that the amount should be handed over to him till next Wednesday. Complainant agreed before the appellant that he would meet the appellant till next Wednesday. On further conversation, appellant stated that complainant should come during recess to make payment. Thereafter since the orders of posting of the complainant as Constable was passed by the concerned DSP and was given to the complainant by hand delivery, the complainant resumed his duty as Police Constable at Dhanpur Police Station on 12th of

October, 1985. It is the case of the complainant that for last considerable period, the complainant was not on duty and, therefore, he was not in position to manage wherewithal to give bribe amount to the appellant. The complainant, therefore, obtained leave for two days and came to Godhra and went to Anti Corruption Bureau Office on 16th of October, 1985. The complainant met with P.I. Ranganekar and declared the facts of the complainant. Ranganekar was requested by the complainant that for taking legal action against the appellant, the complainant had no wherewith. Thereupon, a complaint came to be recorded by P.I. Ranganekar as stated by the complainant, which is placed at Exh. 12. After recording the complaint, P.I. Ranganekar arranged to call PSI Patel and two panchas for setting a trap against the appellant. In 20 -25 minutes, PSI Patel brought two panchas from ART Office of Godhra. Both the panchas were appraised of the facts of the First Information Report and introduction of the complainant and the panchas were made. PI Ranganekar stated that the complainant had no money to pay bribe amount and, therefore, the amount of Rs. 500/- in denomination of 5 notes, each of Rs. 100/- were provided by P.I. Ranganekar. As usual, utility and property of anthracene powder was explained to panchas and complainant and all the five notes, each of Rs. 100/-, after noting the numbers in panchnama, were smeared by anthracene powder. PSI Patel thereafter destroyed the paper on which the said muddamal notes were kept and washed his hands by soap. The hands of all present

were clean in ultra violet lamp and the notes smeared with anthracene powder were placed in left side bush shirt pocket of the complainant. The left side bush shift pocket of the complainant was empty. The complainant thereafter was instructed by P.I. Ranganekar that along with panch No.1 Ramanbhai Nanabhai Raval complainant was to approach appellant in DSP Office and give muddamal notes on making demand by appellant. It was directed that till the demand is made, the complainant must not touch amount of muddamal notes put in his shirt pocket. Panch No.1 Ramanbhai Nanabhai Raval was also instructed to accompany complainant at DSP Office in Sheet Branch and to hear the conversation between the complainant and the appellant as well as to observe what might take place. Other staff members of the raiding party as well as panch No. 2 were instructed to conceal them around DSP Office scattered and on signal being made by panch No. 1 to rush to the concerned branch of the DSP Office. Panch No. 1 was instructed to give signal if the amount is accepted by the appellant. Thereafter, at about 2.45 panch No. 1 and complainant went to DSP Office in Sheet Branch at the table of the appellant. The complainant stood before the table and panch No.1 stood nearby. Some other two persons were also present at that time, but they immediately left and thereafter in the office there were only three persons, i.e. appellant sitting in the chair, complainant was standing and panch No.1 was also standing behind the complainant. Complainant inquired from the appellant that

when his order for Head Constable was to be issued. Appellant stated that whether complainant had brought the amount. The complainant replied that he had brought the amount and with this he took out muddamal notes from his shirt pocket and delivered to the appellant, which he took with his left hand. The appellant put the amount of muddamal notes in his left bush shirt pocket. At the time, panch No.1 went out of the office and gave signal. In the meanwhile, the complainant requested Peon to bring tea, but the appellant refused to take tea. On signal being received, the raiding party rushed to the spot and reached near the appellant. PI Ranganekar directed the accused to remain status quo. Thereafter, Ranganekar took out a wallet from the pocket of the appellant, which contained currency notes of 189 rupees. Thereafter, as per the direction of PI, panch No.1 searched pant pockets of the appellant and he found muddamal notes from right hand pant pocket of the appellant, which were the same notes, numbers of which were noted in the first part of panchnama. Thereupon, except complainant and appellant, the hands of all raiding parties were examined in ultra violet lamp. Thereafter, the hands of panch No.1 were found with the marks of anthracene powder in ultra violet lamp. Right hand of the appellant also contained anthracene powder in ultra violet lamp. In right hands of the complaint, anthracene powder marks were also found. Anthracene powder marks were also found on the pocket of the bush shirt as well as on right hand side pant pocket of the appellant. The said notes

and pant of appellant were seized by PI, after arranging other clothes for the appellant and detailed panchnama of this procedure was prepared and signed by panchas as well as PI. Thereafter, the investigation was carried out by P.I. Ranganekar and a crime came to be registered against the appellant on 16th of October, 1985 at about 18.00 hours. A charge sheet in pursuance of the above investigation came to be filed against the appellant in the court of Special Judge at Godhra.

3 At Exhibit-1, on 29th of May 1990, a charge came to be framed by the Special Judge, Godhra, against the appellant for the offences punishable under Section 5(1)(d) to read with Section 5 (2) of the Prevention of Corruption Act, 1947 as well as under Section 161 of the Indian Penal Code. The appellant pleaded not guilty to the charge.

4 The prosecution examined as many as nine witnesses to prove the case against the appellant.

PW-1 Complainant Atamaram Shankarbhai Solanki is examined at Exhibit-11; PW-7 Ramanbhai Nanabhai Raval, panch No.1 is examined at Exhibit-33; PSI Naranbhai Narottambhai Patel, who participated in the raid, is examined as PW-8 at Exhibit-37 while leader of the raid PI Dinkar Mangesh Ranganekar is examined as PW-9 at Exhibit-38. Other witnesses are PW-2

Ramanbhai Mayaji Parmar is examined at Exhibit-19 to produce the order of sanction to prosecute being a Clerk of concerned office; PW-3 Vijaysinh Amarsinh Solanki, is examined at Exhibit-23, who was a Clerk in DSP Office at the relevant juncture and stated that he handed over the orders of posting of the complainant as Constable, Dhanpur Police Station, after obtaining signature of complainant on 11th of October, 1985. He produced concerned register as Exhibit - 24. PW-4 Ramsinh Bhurabhai Solanki is examined at Exhibit – 26, who was also a Clerk of the DSP Office and he stated that on 7th , 11th and 16th of October, 1985, the appellant was present in the office. This witness being Muster Clerk, he produced muster register vide Exhibit – 7. PW-5 Vinodkumar Pratapsinh Bariya is examined at Exhibit – 28, who was peon, served at the Wing of the DSP Office, where the appellant was sitting and he stated that on the day of raid i.e. on 16th of October, 1985, he was requested by the complainant to bring tea . In his examination in cross, wherein he has stated that he did not see complainant visiting Sheet Branch before 16th. PW-6 Narendra Parsottam Patel, Exhibit 29, is also a Clerk of DSP Office and he stated that in DSP Office he was looking after leave accounts of employees of the Department while the appellant was Sheet Clerk and looking after the departmental proceedings.

5 General tenor of the evidence of PW-1 Atamaram Shankarbhai Solanki – complainant; PW-7, Panch No. 1 - Ramanbhai

Nanabhai Raval; PW-8 PSI Naranbhai Narottam Patel and PW-9 P.I. Dinkar Mangesh Ranganekar, is required to be noted though learned Trial Judge in his judgment has taken due notes of these evidence.

6 Complainant - PW-1 having corroborating his complaint , stated about visiting DSP Office on 7th of October, 1985 and on 11th of October, 1985 and as to the demand made by the appellant of Rs. 500/- for issuing early order of posting for the Head Constable. He stated that, therefore, he visited ACB Office on 16th of October, 1985 and offered his complaint which was recorded and trap was laid. As instructed, he and panch No. 1 visited the appellant at about 2.45, wherein the appellant demanded the amount for issuance of orders for posting him as Head Constable, which he delivered muddamal notes with anthracene powder and the appellant put such notes in his left side bush shirt pocket. Panch No.1 was accompanying him and after accepting of the amount, panch No.1 went outside and gave signal to the raiding party. He further stated that on giving signal, the raiding party reached and P.I. Ranganekar took out one wallet from the shirt pocket of the appellant, but muddamal notes were not either in the pocket or in the wallet. Panch No.1 thereafter was directed to search the person of the appellant and ultimately from right hand front pant pocket of the appellant, muddamal notes were recovered. In his cross-examination, he has been asked about his past, in which it was alleged that as many as 48 departmental

proceedings were taken against him including allegation of corruption. Not only that, it was alleged that the complainant was an accused in the past for the offence under Section 376 for gang rape. He was asked about the location and surrounding situation of DSP Office and the office of Sheet Branch of the said office. He was confronted that on 11th of October, 1985, his posting order was not delivered to him by hand. He also admitted in his cross examination that at the time of raid, PI Ranganekar, started searching the person of the appellant and the muddamal notes were not found from his shirt pocket. The relevant para is para-20 of his evidence. He admitted that he did not introduce Panch No.1 with the appellant. It was alleged that he was not entitled to the posting of Head Constable, even then, the complainant was insisting before the appellant to issue such orders, and on refusal, this false complaint came to be field by him. It was also suggested to the complainant that the complainant took out the muddamal notes and requested the appellant that since he had obtained the orders of his posting, he is entitled to celebrate and offer tea to all while appellant seeing the notes, stated that, for tea, this much amount was not necessary. The complainant attempted to thrust the said amount in the bush shirt pocket of the appellant and when appellant stood up, the amount was thrusted in his pant pocket, though the complainant denied all these allegations .

7 Panch No. 1 PW-7 stated that he was called by PSI Patel

from his Office i.e. ARTO and requested him to participate in the trap as panch. Second panch was also from his office. He stated that he was introduced with the complainant and was appraised of the facts of the First Information Report. He stated about the experiments of anthracene powder and ultra violet lamp carried out by PSI Patel. He stated that the notes of muddamal had been given by PI Ranganekar. He in his examination-in-chief, corroborates first part of panchnama. He states that by walking they reached at DSP Office and as per instructions, along with the complainant, he went to the office of the appellant. There were two other persons who left immediately. The complainant asked about his posting order. The appellant replied that the complainant would get his order, but whether complainant had brought the amount of bribe. Immediately thereafter the complainant took out muddamal notes from his pocket and delivered the same to the appellant. The appellant received such notes with right hand and placed that notes in left pocket of his shirt. Thereafter, the complainant requested peon to bring tea, but the appellant refused to take tea and thereafter complainant as well as panch No. 1 both came out of the office and in the lobby. He further stated in his chief examination that thereafter he gave signal by putting his hands on his head and, therefore, the persons from the raiding party reached in the office of the appellant. PI Ranganekar introduced himself to the appellant and asked him to remain status quo. PI Ranganekar asked the name of the appellant, which he stated to be Jayantilal

Kuberdas Sharma. According to this witness, he stated that PSI Patel examined the hands of the panchas in ultra violet lamp, but the hands were clean. Ranganekar thereafter stated the appellant to stand up and, therefore, the appellant stood up. PI Ranganekar took out one wallet from the pocket of the accused which was in his bush shirt pocket. The wallet contains currency notes of Rs. 189. His shirt pocket was examined in ultra violet lamp and it was found that the pocket contained anthracene powder marks. Thereafter, PI Ranganekar requested this witness to search the appellant. The witness further states that he searched the pockets of the pant of the appellant and he found muddamal notes from front right pant pocket of the appellant. The numbers of these notes were confirmed by first part of the panchnama. The witness further states that the muddamal notes contained anthracene powder marks. Those notes were seized by PI Ranganekar. The witness further states that thereafter his hands were also examined in ultra violet lamp and his hands were found marked with anthracene powder. The pant pocket of the appellant was also examined in ultra violet lamp which contained anthracene powder marks. In his cross-examination, this PW-7 stated that at the relevant juncture, his office was situated in Haidri society and just opposite their office, Scarcity Branch of Anti Corruption Bureau was located. There was only distance of about 15 steps between these two offices. The witness further states in cross examination that at that time PSI Mr. Patel was serving as such in the office situated just

opposite his office, but he did not know him. He stated that in that area, there were only those offices and remaining houses were residential premises. He further stated that between his office and office of Anti Corruption Bureau, other offices were situated within the distance of 1 KM. He admitted that in one earlier trap case, two employees of his office were summoned to take part as panchas by Anti Corruption Bureau Office. He denied that he knew Ranganekar. He stated that panchnama was written by some other staff member of ACB and was dictated by Mr. Ranganekar. The second part of panchnama was started to be written at about 2.30 p.m. He stated that the time of starting of the panchnama and completion of the same was rightly mentioned in the panchnama. He stated that he read the panchnama and panchnama was written contemporary to the incidents which were taking place. He denied that the panchnama was prepared after the incident was over. He further stated that he reached in DSP Office at 2.30 p.m. He admitted that at the entrance of DSP Office, there were two roads and the room in which the appellant was sitting was in the back. He admitted that entering to the DSP Office, the first room was of DSP and thereafter the rooms and office of PSI and Readers were situated, and thereafter the office of the appellant was situated. He admitted that all these four rooms were in one line. There is one otla of 7 feet in front of each room. He admitted that to and fro in the office was through that otla. He admitted that at least six employees were sitting in the room where the appellant was sitting.

He denied that when he reached at the DSP Office, recess was not commenced. He denied that he did not reach at the DSP Office at 2.30 p.m. He denied that they all reached in the DSP Office at 2.10 p.m. and recess was not commenced. He admitted that in the room in which the appellant sitting was near the entrance road. On one stool, one peon was sitting. He stated that after obtaining bribe money, the appellant did not give any order of posting to the complainant and complainant did not ask for such orders after the bribe amount was given. He stated that at the time when the amount was passing from complainant to appellant, he was sitting at the distance of five to six feet. He admitted that in panchnama or in his statement before the police, there was no reference that the complainant asked the appellant to give his order. He deposed that before passing of the money between complainant and appellant, five minutes conversation took place. He stated that he gave signal and raiding party reached within two minutes. During this two minutes, he was in the lobby and he came back along with other raiding party members. As soon as PI Ranganekar came in office, he started searching the pockets of the appellant. After obtaining wallet from his shirt pocket, hands of the PI Ranganekar were examined in ultra violet lamp, and anthracene powder marks were found. Though he stated that this fact had not been stated by him in the panchnama. He stated that when he and complainant came out of the office and given signal and all of them entered in the office of the appellant. During that period what appellant was

doing was not known to him. Before PI Rangnekar started checking the pockets of the appellant, PI Rangnekar asked him that where had the appellant put the money. The witness further stated that, to this he replied that the appellant had put the amount in the upper pocket of the bush shirt. The witness stated that when the appellant accepted the amount of Rs. 500/- and placed the same in his bush shirt pocket, he was not knowing that there was a wallet in the same pocket. He admitted that from the place where the appellant was sitting and his activities could be seen by anybody standing outside in the lobby. He denied that when PI Ranganekar made the appellant stand up, he thrusted the amount of Rs. 500 in the pant pocket of the appellant. He stated that the bush shirt in which the appellant had placed the notes had not been seized. He denied the suggestion that PI Ranganekar placed the amount of muddamal in the pant pocket of the appellant. He stated that it was not true that the hands of Ranganekar were not examined in ultra violet lamp. He stated that the chair on which the appellant was sitting and the table before him were not examined in ultra violet lamp. He admitted that since last 5 to 7 times, he remained present in the court for his evidence. He denied that each time his reply was read over to him. He stated that on that day he came to the court at 11'O clock and contacted the office of the Government Pleader. He stated that he visited the Government Pleader's office to inform that he was available for the evidence. In last para of the cross-examination, the witness stated that before starting first part of

the panchnama, he was asked about his address, names, etc. and those details were mentioned in the panchnama. In panchnama the details as to where he was serving was not written. He gave his address as resident of Godhra except that no other details were given by him. He denied that when he visited for DSP Office, the appellant did not demand any amount of bribe. He denied the suggestion that the complainant offered any amount of bribe to the appellant. He denied the suggestion that PI Rangnekar thrusted the amount of Rs. 500/- in the pocket of the appellant. This is all is the evidence of independent panch witness.

8 PW-8 Naranbhai Narottam Patel, who participated in the trap as PSI, stated in his examination-in-chief that on the day of the incident, he was serving as PSI, ACB Office at Godhra. On 16th of October, 1985, ACB PI Ranganekar summoned him. He and his companion PSI Ravaliyar both went to PI Ranganekar. At that time, both of them were on duty in ACB Scarcity Branch. According to this witness, PI Ranganekar directed him to obtain two panchas and hence he visited ART Office and secured two employees as panchas. In ACB Office, PI Ranganekar started the process of trap and introduced complainant and panchas to each other. The complaint as recorded by PI was read over to the panchas. PI Ranganekar stated that the complainant had no money to give in bribe and, therefore, PI Ranganekar had presented five notes, each of denomination of Rs. 100/-. Anthracene powder experiments were

carried out by one of the employees of ART Office. According to this witness, thereafter, all of them, went to the DSP Office and were scattered around the office as instructed by PI Ranganekar, while complainant and panch No.1 went to DSP Office for laying a trap. On receiving signal from panch No.1, all members of the raiding party reached in the DSP Office and PSI Ranganekar inquired about the bribe amount. After due experiments of antrhacene powder, the second part of panchnama was completed. According to this witness, during this process, he was present and in ultra violet lamp, anthracene powder marks were found in the hands of the appellant. He further states that during the whole process, the experiments of ultra violet lamp was carried out by him. He carried out all the experiments of ultra lamp violet lamp as directed by PI Ranganekar. In his examination-in-cross, the witness stated that, at the time of incident, their Branch was independently working and was not working under PI Ranganekar. At that time, one PI Mr. Bhoi was working as Head in his office. He admitted that Deputy Director had instructed him to assist P.I. Ranganekar, if he so desired. He admitted that on summoning P.I. Ranganekar, when he appeared before him, he did not take any permission of his Head P.I. Bhoi. He admitted that PI Ranganekar had called for him through some persons, but whom, he did not know. He stated that, at that time, his office was sitting just opposite ART Office. He stated that before the incident, right from 1980, he was working in ACB Scarcity Branch. He was called at

about 12.30 to 13.00 hours and reached at the Office of Mr. Ranganekar at about 13.00 hours. He stated that, as per the instructions of PI Ranganekar, he searched two panchas. He met with the head of RTO Office and secured two employees as panchas. He denied that he did not explain properties of anthracene powder and ultra violet lamp. In para-5 of his cross-examination, he was asked about the location of the office of the appellant. He denied the suggestion that on account of good relation with PI Ranganekar, he was stating false on oath. He stated that in the office of Ranganekar, there were other persons, who could handle ultra violet lamp. He stated that, at that time, as noticed, there was no PSI. He denied that, ordinarily, in such raid, the work of ultra violet lamp was also performed by employees of the same office. He stated that on receiving signal from panch No.1, he and PI Ranganekar, both entered in the office together. He denied that since the muddamal notes were not found from the shirt pocket of the appellant, he was asked where the notes were placed by him. He denied that, in reply, the appellant stated that he had not accepted any amount and turned over the pockets of pant and bush shirt. He denied the suggestion that forcibly the muddamal notes were thrusted in the pocket of the appellant, and on that account, the hands of the accused were tainted with anthracene powder. This is all is the evidence of PW – 8 PSI Naranbhai Narrotam Patel.

9 PW-9 and last witness Dinkar Mangesh Ranganekar,

leader of the raiding party, stated in his examination-in-chief that on 16th of October, 1985, he was serving as Police Inspector in ACB Office. From that day, complainant - Police Constable – Atamaram Shankarbhai Solanki, approached him and declared the facts of his complaint. Therefore, he wrote the complaint in his own hand writing on blank paper. The complaint was read over to the complainant and thereafter complainant signed the said complaint. He produced the complaint at Exhibit - 12. The witness further stated that after the complaint was recorded, he instructed PSI Patel to call for two panchas, and at that time, PSI Patel was working under him. PSI Patel brought two employees from ART Office as panchas. Panchas were introduced with the complainant and they were appraised of the facts of the complaint given by the complainant. Complainant was asked to produce the amount to be given as bribe. Witness further states that in the presence of panchas, the complainant stated that since last two years, he was dismissed from service and was not in a position to manage the amount of bribe. The witness further stated that, therefore, from his office account, he produced five notes, each of Rs. 100/-. The numbers of the notes were noted in panchnama. He thereafter stated about the experiments taken place about ultra violet lamp and the anthracene powder. The first part of panchnama, according to him, was over. He further states that the notes were smeared by anthracene powder by PI Patel and thereafter those notes were placed in shirt pocket of the complainant. He states that

thereafter PSI Patel washed his hands by soap and in ultra violet lamps, his hands were found clean. The witness further states that the complainant was instructed to go along with panch No.1 at Sheet Branch of DSP Office and talked with the appellant about issuance of his order. He was further instructed that if the appellant demanded the amount as per his earlier demand, the complainant was to deliver the amount which was kept in his shirt pocket. Except that, he was warned not to touch the said muddamal notes. Witness further stated that panch No.1 was instructed to accompany complainant and to go at Sheet Branch and to hear the talks which might take place between the complainant and appellant and to watch the delivery of the amount. If the appellant accepts the amount, he was to signal the raiding party by putting his hands on his head. According to this witness, at 14.20 hours, all of them started from their office to go to DSP Office. At about 14.30 hours, they reached at DSP Office. Complainant and panch No.1 proceeded to Sheet Branch. Remaining persons concealed thems and stood near the said office. After about 10 minutes, panch No. 1 came out and gave signal by putting his hands on his head. Therefore, according to this witness, he himself, panch No.2 and members of raiding party rushed to the room of Sheet Branch. He further stated that he had introduced him to the appellant and had asked about his name, etc. Police Inspector Mr. Patel thereafter examined the hands of all the raiding party, except complainant and appellant, in ultra violet lamp, but the hands of all of them, were

clean. Thereafter, the hands of the appellant were examined in ultra violet lamp and it was found that the hands of appellant had been smeared by anthracene powder. The hands of the complainant and shirt pocket were also examined in ultra violet lamp and anthracene powder marks were found. The witness further stated that the notes of muddamal were not in the pocket of the appellant, where the same was kept. Thereafter, pant and shirt pockets of the appellant were examined in ultra violet lamp and it was found that the shirt pocket as well as one Wallet kept in the pocket contained anthracene powder marks. He took out wallet from the pocket of the appellant, which was seized. Thereafter, according to this witness, panch No. 1 was directed to search the pant pockets of the appellant. The left side pant pocket of the appellant was empty while from right side front pocket, five notes, each of denomination of Rs. 100/- were found. The numbers of those five notes were confirmed by first part of the panchnama. These notes were examined in ultra violet lamp and anthracene powder marks were found. Both the hands of panch No.1 were also examined in ultra violet lamp and they were also found tainted with anthracene powder. The witness further states that the said muddamal notes were seized. The witness further states that the right side front pocket of the pant of the appellant was also examined in ultra violet lamp and inside the pocket, the marks of anthracene powder were found. The witness states that Peon was directed to obtain other clothes for the appellant and pant worn by the appellant was seized.

Witness further states that on the clothes of the appellant, which were seized, anthracene powder marks were rounded by ball pen. A seizure memo was prepared, in which the signature of the appellant was obtained and was given to the appellant. He produced on record office copy of the said seizure memo at Exh. 39. Thereafter, the panchnama of second part was completed. He stated that after registering the crime, he investigated the same and thereafter on his transfer, he handed over the investigation to his successor. In his cross-examination, this witness stated that his Office and ACB Scarcity Office were separate and separately situated, at a distance of about 1.00 km. He admitted that between these two offices, other offices were situated. He denied the suggestion that ACB PSI Patel working in Scarcity Branch was not working under him. He admitted that at that time one Mr. Bhoi was PI of ACB Scarcity Branch. He denied that both the offices were under the control of different Directors and stated that both the offices were under the control of one Director i.e. Director of Baroda. He further stated that PSI Patel was also working in his office because at that time the post of PSI was vacant in his office. He stated that when complainant came, PSI Patel was in his office. It was about 10.30 a.m. He denied that he sent some persons to call PSI Patel from Scarcity Branch. He admitted that he did not know the complainant. He came in Godhra District in 1981 and remained in the said District upto 1987. His Head Quarter was at Godhra all through that period. Thereafter he was transferred to

Gandhi Nagar as Dy. S.P. and again in 1988 he was transferred as Dy. S.P., Panchmahal. He admitted that at Godhra, he owns one house. He denied that his house was worth Rs. 4 lakhs. He stated that he did not give instructions to PSI Patel to call panchas only from the ART Office, but he admitted that during his office duties, he availed the services of panchas from ART Office. He denied the suggestion that the panchas were especially selected by him. The witness further stated that after the first part of panchnama was over, the second part of panchnama was started at 14.45 hours. He admitted that he knew the timing of the search in the DSP Office. He denied the suggestion that intentionally and deliberately he selected the time in recess. He stated that at 3'O clock, all other employees of DSP Office did not resume, but on account of raid, all employees remained out of their office. He admitted that in pant seized, the pockets were kept in front as well as in the back. He admitted that the pant which appellant had worn, had no pockets in side of the pant. He stated that as soon as he entered in Sheet Branch, he asked panch No.1 that where the appellant had placed the muddamal amount and panch No.1 replied that the amount had been placed in the pocket of his bush shirt. Thereafter, he searched the shirt pocket of the appellant. He found one wallet from the pocket. He admitted that, ordinarily, in the process of such raid, the search of the pockets were made by panch No.1 or panch No. 2. He further admitted that the muddamal notes could not be found from the shirt pocket of the accused. He himself examined

that shirt pocket and not through panch. He stated that he had started thinking that where the notes were. He admitted that an inquiry against the appellant about his property i.e. residential building, was conducted by him. He also admitted that after inquiring, he had submitted a report. The witness stated that the details of the said report could not be remembered by him. He stated that he could not certainly say whether the report contained that there had not been anything irregular about the property of the appellant. He stated that he could not remember whether said report was submitted by him on 28.9.1985. He denied the suggestion that the appellant met him on 28th of September, 1985 and he told the appellant that he would send a report in favour of the appellant. He denied the further suggestion that thereafter he visited the appellant in his office on 04th of October, 1985. He further denied the suggestion that at that time he told the appellant that a report was submitted in favour of the appellant and the appellant was to give him Rs. 5,000/-. He denied the suggestion that the appellant had informed him that the appellant had not done anything wrong and would not give any amount to him. He denied the suggestion that keeping the grudge of the above matter, a false trap had been arranged by him against the appellant. He stated that he did not know that against the complainant including the allegation of corruption, there were in all, 49 proceedings were taken. He denied that the complainant was called by him on about 14th of October, 1985. He denied the suggestion that he was in

contact with the complainant during 14th to 16th of October, 1985. He denied the suggestion that, therefore, volunteering to present Rs. 500/- as bribe, this false trap was arranged by him. He further stated that after receiving signal from panch No.1, at that time, complainant and panch No.1 had been standing in the said room near the door. He denied the suggestion that on seeing them the appellant stood up from his chair. He further stated that the appellant remained seated on the chair. He admitted that the muddamal notes were kept in bush shirt pocket of the complainant. He denied the suggestion that after entering the room, he took out the amount of muddamal notes from the pocket of the complainant and thrusted in the pant pocket of the appellant. He admitted that the bush shirt of the appellant was not seized. He stated that during the period he entered the appellant's room and he searched the muddamal notes, and before that, his hands had been examined in ultra violet lamp. He stated that after recovering the muddamal amount from the appellant, his hands were not examined in ultra violet lamp. He denied the suggestion that the muddamal notes recovered from the pant pocket of the appellant because he had put those muddamal notes in the said pant pocket. He denied the suggestion that along with the complainant, he manipulated the conspiracy against the appellant. He stated that when panch No.1 recovered the muddamal notes from the pant pocket of the appellant, he was standing. He stated that he could not say that the chair on which the appellant was sitting, contained

side handles. He stated that during the whole process of trap, it was not examined whether there were antrhacene powder marks on the chair of the appellant. This is all is the evidence of the Investigating Officer.

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10 After recording the evidence, the circumstances appearing against the appellant were put to him in pursuance of the provisions of Section – 313 of the Code of Criminal Procedure. Except some of the facts, the appellant denied the evidence of the prosecution. In a question, whether he wanted to say anything further, the appellant stated that PI Ranganekar had fabricated a false case against him. He had not committed any crime. Appellant further stated that Ranganekar and raiding party members rushed to his office and surrounded him and he was caught hold. On account of this tension, he could not remember what was going on. Ranganekar asked him that where the amount had been placed by him and directed him to put out the said amount. The appellant further stated that he replied to Ranganekar that he had not accepted any amount and he had turned over his pockets. During his long tenure as government employee, no adverse note was there, even smallest departmental punishment was also not awarded to him.

11 After hearing learned counsels for the parties and after hearing the case on the question of punishment, the learned Trial

Judge recorded the order of conviction and sentence, as aforesaid.

12 In this Appeal, learned Advocate Mr. Atul Mehta for the appellant and learned APP Mr. A.Y. Kogje for the State were heard. Learned Advocate for the appellant submitted that this is not an ordinary case wherein innocent victim has been made scapegoat. It is submitted that the person who complains of, being victim of bribe giving, is of dubious character and at least 48 departmental proceedings were taken against him. It is submitted that some of them were very serious including demand of bribe and including being accused in one gang rape case. It is submitted that the evidence of complainant must be appreciated and looked into with greatest care as complainant, may be of a character, to manipulate many things including this complaint, to rope in even innocent government employees for his own selfish purpose. It was further submitted that the whole prosecution is required to be viewed from the angle as to whether the present appellant was in position to oblige the complainant, as stated by him. It is submitted that the issuance of the order of posting as Head Constable, was not within the power of the appellant, but concerned disciplinary authority was the final authority. The appellant was not even recommending authority as to probabilise the say of the complainant in respect of the demand of bribe as complained of by him. It is submitted that the prosecution case in its root is improbable. On this count, learned Advocate for the appellant relied upon a decision of the

Apex Court to substantiate his contention in the matter of STATE vs. K. NARASIMHACHARY, as reported in 2006 Cri. L.J. 518. The stress was placed on paras, 21, 22 and 25 of the decision, wherein the Apex Court observed that the accused in the said case was merely a recommending authority and not the valuer or final authority. The accused, as per the facts of that case, also was not an outward clerk for issuance of property valuation certificate. The said certificate was already forwarded and was signed by final authority before alleged demand of bribe was made by the accused. The Apex Court in the said case, therefore, observed that all those circumstances created suspicion about demand of bribe and acquittal of the accused from the corruption charges was held proper. Learned Advocate Mr. Mehta further was submitted that in this case also the present appellant is not final authority nor recommending authority so as to satisfy the complainant and, therefore, the theory of demand appears to be improbable. It was further submitted that this story of the complainant, as narrated by him, is doubtful on fact. It was submitted that there was no doubt about the fact that in one of the departmental inquiries, complainant was facing reversion and was reduced in rank to post of Constable for six months. He served as Constable for three days and he came to be dismissed in other departmental proceedings. It was submitted by learned Advocate for the appellant that the circumstances, therefore, necessarily suggest that unless the complainant actually serves as Constable for six months, the

question of posting him as Head Constable, would not arise. Even after reinstatement, he would have to serve as Constable for six months. Attention of this Court was drawn to the deposition of the complainant in para-21, wherein the complainant deposed that in the order passed by the State Government on 11th of October, 1985, it was not clarified that since he was undergoing other departmental punishment of reduction in rank, he was to be posted as Police Constable.

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It was contended therefore that the question of further promotion as Head Constable of the complainant was not possible on account of the orders passed by the State Government. After reinstatement also, complainant was required to serve as Constable for six months and the story in respect of demand of bribe, is absolutely false and shakes the very foundation of the prosecution case. It was contended that otherwise also it was not the duty of the appellant to maintain leave account and regulate the same as to accommodate the complainant. Attention of this Court is drawn to the evidence of PW-6 Narendra Parsottam Patel, who in clear terms, according to learned Counsel for the appellant, stated that the appellant was dealing with departmental proceedings, while PW-6 Narendra Parsottam Patel, being Clerk in DSP Office, was dealing with leave accounts of the employees. It was, therefore, contended that this circumstance, undoubtedly, establishes that the appellant was not

in position to oblige the complainant and to make demand of bribe, as has been fabricated in prosecution case. It was contended that, even if the appellant was in-charge of the affairs, he was mere forwarding link to take decision by disciplinary authority. In this respect, attention is drawn to the deposition of the complainant, in which he has admitted that on 11th of October, 1985 the order passed by DSP, it was made clear that order of posting the complainant as Head Constable, would be passed only after he serves as Constable for six months in pursuance of punishment awarded to him. It was submitted that in this view of matter, visit of the appellant to DSP Office, on 7th of October, 1985, becomes doubtful. It was submitted that further story of the complainant who had visited DSP Office on 11th of October, 1985 and reiterating the demand of bribe by the appellant stands false by the circumstances and by concrete evidence. Attention of this Court was drawn to the evidence of PW-3 Vijaysinh Amarsinh Solanki. It is submitted that PW-3 was working as Registry Clerk in DSP Office. It was submitted that on 11th of October, 1985, PW-3 was given an order of office posting after noting the same in Outward Register. In cross-examination, according to learned Advocate for the appellant, the witness has admitted that both the postings – Orders - Exhibits 24 and 25 were to be sent to concerned police station directly and were in closed envelopes. He admitted that from Sheet Branch, no communication is directly delivered to any person. It is submitted that this witness also admitted that Registry Branch and Sheet

Branch were different offices and were sitting in different wings and between them, there were other Branches of DSP Office. From this evidence, it is submitted that the story of the complainant that on 11th of October, 1985, he was delivered the order of posting by Sheet Branch is falsified and ultimately his visit to the appellant on that day i.e. 11th of October, 1985 also becomes doubtful. In this respect, it is also submitted that, the evidence of Peon, i.e. PW-5 Vinodkumar Pratapsinh Bariya is also material to be considered in which he stated in cross-examination that before 16th of October, 1985, he did not observe the complainant visiting DSP Office. It is submitted that PW-5 Vinodkumar Bariya is Peon and constantly sitting outside the Sheet Branch. It is submitted that this is one more circumstance, which negatives the story of the complainant to have visited Sheet Branch.

13 It is further submitted by learned Advocate for the appellant that, according to prosecution story, demand was made on 7th and 11th of October, 1985. It is submitted that complainant remains silent till 16th of October and did not attempt to file any complaint immediately before ACB Police Station. It is submitted that for last two days from 16th of October, 1985, though complainant was in Godhra itself, no complaint came to be filed, causing inordinate delay in filing FIR, which is one more suspicious circumstance to disbelieve the prosecution case.

14 Commenting upon panch witnesses, it was submitted that panchas were not independent witnesses. Firstly, however, PI Ranganekar had chosen to call PSI Patel from other branch of ACB and entrusting him to select panchas itself, is a circumstance suspicious in the nature. From the evidence of P.I. Ranganekar, PW-9, on his admitting the fact, it becomes clear that the panchas from ACB Office were also selected on earlier occasion. It is further submitted that it must be borne in mind that office of ACB Scarcity Branch is situated in just neighbourhood of ART Office, where PSI Patel – PW-8 was posted. It is submitted the witnesses, not only panch, but PSI Patel and PI Ranganekar, both submitted that between regular ACB Office and ART Office, there were numbers of government offices situated and even though the panchas were selected from ART Office, from where on earlier occasion also, panchas were selected. This is a clear case of taking panchas from the same office which is discrediting the evidence of panchas as independent witness. Reliance is placed on an decision of this Court in the matter of THE STATE OF GUJARAT vs. BHAVJIDAN CHANDIDAN CHARAN, as reported in 1984 GLH 572, wherein in para-3, Division Bench of this Court, observed that selection of panchas is vital issue in the case under Anti Corruption Act. It is observed that in the said case, the Investigating Officer admitted that he selected panchas from Irrigation Department three times. It is, therefore, observed that the panchas lost their character as an independent witnesses. It is submitted that in this case also when

it is admitted fact that panchas are selected earlier from that ART Office, required corroboration to the evidence of complainant through independent witnesses is lacking on account of mode of selection of panchas by PW-8 PSI Patel. It is submitted that this vital issue is required to be seriously viewed.

15 It is further submitted that if chronological events as has been disclosed by prosecution evidence is closely scrutinized, it becomes clear that at each step doubt is created in prosecution case. It is submitted that along with the above referred circumstances, it must be appreciated that PI Ranganekar - PW-9 summoned PW – 8 PSI Patel for performing the trap. He was called specially. This is evident from the evidence of PW - 8 Mr. Patel. While in the evidence of PW - 8 Ranganekar, he deposed that PSI Patel was working under him and was present in the office. This circumstance appearing from evidence, renders the role of the Investigating Officer suspicious. It is further submitted that PW - 8 PSI Mr. Patel admitted in his evidence that in the staff of ACB Office there were other employees who would have performed perfectly the part of Mr. Patel, even then, PSI Patel was specially called. It is also suspicious that PI Ranganekar directed PSI Patel to call for the panchas, which could have been entrusted to any employee of ACB Department. The suspicious role of both the Police Officers leads to the inference that complainant, PW-8 PSI Patel, PW-9 PI Ranganekar conspire together to frame the appellant in false trap

case on account of grounds which PI as well as complainant had against appellant, which is disclosed in the evidence.

16 It is further submitted that on touchstone of probability of the case, the prosecution case is not trustworthy. It is submitted that panch No.1, PW-7 Ramanbhai Nanabhai Raval, deposed that when they approached the appellant, appellant had asked to the complainant that had he brought the amount of bribe. It is submitted that this is ex facie impossible that a government employee, in presence of third party, would utter about bribe and more so when it is an admitted fact in the evidence that panch No.1, who accompanied complainant till Sheet Branch, was not introduced to the appellant by the complainant and panch No. 1 who remained third party character for the appellant. It is submitted that, therefore, in the presence of such third party, it would not be probable that the appellant would have told to the complainant whether he had brought the amount of bribe. Further, in this respect, according to learned Advocate for the appellant, there is contradiction to the extent of using this phraseology of bringing of bribe by panch No. 1 and as narrated by the complainant in his deposition. Panch No. 1, according to learned Advocate for the appellant, therefore, is not an independent and reliable witness, so as to corroborate the say of the complainant.

17 It is submitted that one more circumstance which may affect the prosecution case in respect of experiment of anthracene powder. It is submitted that there is grave lacuna in prosecution case so far as first part of the panchnama is concerned. It is submitted that it is amply revealed from the evidence that PW-8 PSI Patel smeared muddamal notes with anthracene powder and he was also performing as ultra violet lamp operator. Naturally, PW-8 further operated ultra violet lamp even after he washed his hands after putting muddamal notes in the pocket of the complainant. It is, therefore, submitted that nobody verified anthracene powder marks on ultra violet lamp and who handled the same. It is submitted that this circumstance is vulnerabile to the fact of tampering with the anthracene powder marks. It is submitted that after giving amount to appellant, the conduct of the complainant is unnatural to come out along with panch No. 1 in the lobby. Further, as per the evidence, as soon as on signal being given, raiding party reached in Sheet Branch and PW-9 PI Ranganekar straightaway started searching the accused, which is abnormal and against the settled guidelines. In this regard, attention of this Court is drawn to the evidence of PW-7 panch No.1 Ramanbhai Nanabhai Raval, who stated in his cross-examination that as soon as PI Ranganekar entered in the Branch, he started searching the accused. These are extraordinary circumstances unexplained by the prosecution, destroying the prosecution case. Not only that, it is submitted that PI Ranganekar, PW-9 in his deposition accepted

that ordinarily in such cases to show fair investigation, search of the muddamal notes is always made either by panch No.1 or panch No.2. The transparency of the investigation is lost by the attempt on the part of PI Ranganekar to carry out search on the appellant by himself.

18 It is submitted that one more vital circumstance is required to be considered along with the prosecution evidence. It is the prosecution case that the amount of muddamal was kept in shirt pocket of the appellant. There was wallet in the shirt pocket. Now when that wallet was extracted from the pocket of the appellant, in ultra violet lamp, the anthracene powder marks were found only on button of such wallet, which is again an improbability . If the notes were kept in shirt pocket along with the wallet, in all probability, anthracene powder marks must have been found on the button of the wallet. This circumstance casts doubt about the acceptance of the bribe amount by the appellant. In this respect, learned Counsel for the appellant relied upon a decision of the Apex Court in the matter of KANU AMBU VISH vs. THE STATE OF MAHARASHTRA, as reported in 1971 (1) SCC, 503, wherein as per the facts of that case, the accused was wearing a cap and after accepting the bribe amount, put up the cap, which did not contain anthracene powder marks. The fact in this regard is observed by the Apex Court in para-8. One more circumstance about anthracene faint blue marks on an envelope in which the amount

of bribe was given was also considered by the Apex Court. It is submitted that, therefore, in the present case also, the specific case of prosecution that the appellant placed muddamal notes in shirt pocket and finding of marks of anthracene powder only on the button of wallet kept in the said pocket, creates doubt in prosecution case.

19 Learned Advocate for the appellant further submitted that in this case, as disclosed in the evidence, PW-9 Ranganekar, played over enthusiastic role in success of trap. He calls PSI Patel from other Branch and in deposition states that PSI Patel was working under him and was present in his office. It is submitted that this statement of PW-9 is apparently to cover up the selection of panchas by PW-8. Not only that, all the witnesses in clear terms submit that the amount to be utilized as bribe amount was given and produced by PW-9 Ranganekar. When PW-9 Ranganekar, in his deposition, states that he produced the amount of bribe from his office account. It is submitted that to substantiate his stand, nothing is coming forward. It is submitted that though producing bribe amount by police, may not be itself the circumstance, damaging to the prosecution case, but carefully examining the role of P.I. Ranganekar, when this fact is considered, it becomes clear that PI Ranganekar, acted more than an Investigating Officer and took personal interest for the success of the trap especially when the seizure and search of the muddamal notes is made by

Ranganekar from the person of appellant, the same is required to be seen with doubt.

20 One more aspect which learned Advocate for the appellant stressed was in respect of dictating of the panchnama by the Investigating Officer. In this respect, the attention of this Court was drawn to the evidence that complainant PW-1, wherein in para-20, complainant deposed that Ranganekar directed PSI Patel to take a blank paper and to write down as per his dictation and PI Ranganekar thereafter dictated the panchnama. In this respect learned Advocate for the appellant relied upon a decision of this Court in the matter of KANUBHAI KANTIBHAI PATEL vs. THE STATE OF GUJARAT, as reported in 1998 GLH 924, wherein this Court observed that panchnama as dictated by the Investigating Officer and not by panchas, lose its evidentiary value . It is therefore submitted that having regard to the totality of the evidence and above said circumstances appearing from the evidence, the prosecution has miserably failed to prove the prosecution case. Learned Advocate for the Appellant in this respect also relied upon a decision of this Court in the matter of BHARATKUMAR JAIMANISHANKER MEHTA vs. THE STATE OF GUJARAT, as reported in 1982 GLH 249, wherein Division Bench of this Court observed that totality of evidence must be seen in criminal trial, it includes not the prosecution evidence alone, but the defence as well as suggestions made on the part of the defence. In this case,

according to learned Advocate for the appellant, a suggestion is made that PW-1 Ranganekar had an axe to grind against the accused about payment of Rs. 5,000/- from the appellant for the inquiry in respect of property owned by the appellant. It is, therefore, submitted that the case of the prosecution could not be said to have been established beyond reasonable doubt and the judgment and order impugned, is required to be set aside after allowing this Appeal.

21 As against that, learned APP Mr. A.Y. Kogje on behalf of State, drawing the attention of this Court towards the reasoning of the judgment of the Trial Court submitted that the Trial Court considered each aspect of the case along with the submissions made at the trial and came to the right conclusion. Learned APP submitted that Exhibit– 8 i.e. hand written note by the appellant is ample evidence to denote that the appellant was in position to oblige the complainant either for issuance of the orders for posting of Head Constable or preponing the said order. He submitted that Exhibit-18 in the hand writing of the appellant was submitted on 7th of October, 1985 and that itself is suggestive. It is submitted that it is clear that the appellant and the only appellant was dealing with the subject and was in position to play role. It was for him to propose action to disciplinary authority and disciplinary authority was required to take action accordingly. The decision of the Apex Court in the matter of STATE vs. K. NARASIMHACHARY (supra), relied

upon by the appellant, is totally on the different facts. So far as the visit of the complainant to the appellant is concerned, Exhibit – 18 note put up by the appellant is enough evidence to deduce that the complainant visited appellant on that day. The visit of the complainant to the DSP Office on 11th of October, 1985 is also established by PW-3 Vijaysinh Amarsinh Solanki, who in fact delivered personally the orders in question to the complainant and if the say of the complainant is weighed with these circumstances, there is no reason to disbelieve that the complainant did not visit appellant on 11th of October, 1985. This is clear by documentary evidence Exhibit 24 which is an outward register produced by the appellant. Learned APP further submitted that so far as the submission for delay in filing of the complaint is concerned, the dates revealing from the evidence are material. It is submitted that complainant obtains orders for his posting on 11th of October, 1985. On 12th of October, 1985, he resumes at Dhanpur Police Station. Thereafter he obtains leave on 15th of October, 1985 and files a complaint on 16th of October, 1985 and therefore in no circumstances it can be said that the complainant filed complaint with delay, for which there is no explanation. In respect of independence of panchas, learned APP submitted that unnecessary doubts are thrown upon the role of PI Ranganekar. Firstly, though the suggestions are made in respect of inquiry of the appellant conducted by the Investigating Officer Ranganekar, but the same is denied by PW-9 Ranganekar. Nothing could be

brought on record by the defence to show that what was the report filed by Mr. Ranganekar against the appellant and on which date. The connection of the allegation could have been linked if some evidence would have been tendered in this respect and in absence of such evidence, this becomes mere suggestion as denied by P.I. Learned APP submits that this is made clear that the selection of panchas by PW-9 through PW-8 PSI Patel is beyond any doubt. It is submitted that panchas are selected at random by PI Patel and only because panchas are selected from his nehighbouring office, by no stretch of reasoning, it could be said that no independent panchas are selected. Distinguishing the decisions as cited by learned Advocate for the appellant in the matter of THE STATE OF GUJARAT vs. BHAVJIDAN CHANDIDAN CHARAN (supra), learned APP submitted that on facts in the said case panchas were selected three times from Irrigation Department in the circumstances that there was an inquiry against the Head of that Irrigation Department pending before the Investigating Officer of that case and in those circumstances, this Court observed that panchas were not independent and the facts of those case cannot be made precedent for the facts of the present case wherein except using panchas from neighbouring office and second time from that office, nothing is brought about to impeach the credibility of panch witnesses. Presenting bribe money by PI Ranganekar, learned APP submitted a decision of the Apex Court in the matter of RAMANLAL v. STATE OF BOMBAY, as reported in AIR 1960 SC 961, relying upon para-5 of

the said decision, it is submitted that there is nothing wrong if the bribe money is supplied by Investigating Agency. By merely presenting the amount of bribe, the IO would not become an accomplish and cannot be looked with suspicion. It is further submitted by learned APP that there is no undue enforcement on the part of PW-9 Ranganekar either in supplying bribe money or searching the person of the appellant, which were the necessity of the circumstances in which impartial officers have acted and nothing could be brought about to impeach their conduct except suggestion made in respect of dictating of panchnama by Investigating Officer. The attention of this Court was drawn by learned APP to the evidence of panch witness wherein in cross-examination, after panch stated that the panchnama was dictated by P.I., the panch further stated that all through out they were present during panchnama which was started at 2.30 p.m. and completed at 4.00 p.m. The panch further states that he read the panchnama and the panchnama was being prepared as per the contemporary events taking place at that juncture. Learned APP, therefore, submits that this eliminates the possibility that panchnama was dictated arbitrarily by P.I. keeping the panch out of taking any part on the said panchnama. In respect of decisions cited by learned Advocate for the appellant in this respect in the matter of KANUBHAI KANTIBHAI PATEL vs. THE STATE OF GUJARAT (supra) learned APP drawn the attention of this Court towards the observation made by the Court in the said decision that in that case the panchnama

was dictated by the Investigating Officer and was mechanically signed by two panchas. Learned APP submitted that in the present case, on facts, what is stated by panchas, the panchnama was got prepared in the presence of panchas only. Learned APP in respect of dubious character of complainant as pleaded by learned Advocate for the appellant, submitted that diabolical character of complainant in anti corruption cases is hardly a relevant factor. Learned APP relied upon a decision of the Apex Court in the matter of STATE OF MAHARASHTRA vs. NARSINGRAO GANGARAM PIMPLE, as reported in AIR 1984 SC 63, wherein in para-36, the Apex Court observed that it was a wrong approach of the court to appreciate the evidence keeping in mind diabolical character of the complainant especially in the absence of any legal warrant for the same. It is, therefore, submitted that diabolical character of the complainant is not relevant so far as his evidence in the particular case is found trustworthy. It is submitted that if such approach is adopted, it is difficult to establish any case in a trial of anti corruption and if there be any discrepancies, the same should be weighed with touchstone of probabilities. Ultimately, learned APP supporting the judgment and order impugned submitted to dismiss the appeal.

22 In reply, the learned Advocate for the appellant submitted that the judgment of Trial Court is based only on presumption and not concrete evidence. My attention is drawn to certain observation, which according to learned Advocate, are

presumptions drawn by the Trial Court and made conclusion. There was no positive evidence that on 7th and 11th of October, the complainant met with the appellant, even then, the learned Trial Judge presumed that those meetings had taken place without any concrete evidence. The important aspect, according to learned Advocate for the appellant is forgotten by the Trial Judge that the hands of PI Ranganekar were not seen in ultra violet lamp before he started searching appellant. In this respect also, according to learned Advocate for the appellant, learned Trial Judge drawn presumption not based on evidence. It is, therefore, submitted that the vital aspect of the demand of bribery and acceptance of the same, has not been proved by the prosecution. It is submitted that, as aforesaid, there is no positive evidence that on 7th and 11th of October, the complainant met with the appellant and at the time of trap, there are contradictions in respect of demand alleged to have been made by the appellant in the evidence of the complainant as well as panch No.1 PW-7. PW-7 when deposes that appellant asked to the complainant whether the complainant had brought bribe money, the case of prosecution for demand becomes doubtful and in contradictions to the say of complainant and, therefore, the complainant is not corroborated by panch in this respect. Learned Advocate for the appellant in this respect relied upon a decision of the Apex Court in the matter of RABINDRA KUMAR DEY vs. STATE OF ORISSA, as reported in AIR 1977 SC 170, wherein the Apex Court settled three cardinal principles of criminal

jurisprudence and they are as under :

i) that the onus lies affirmatively on the prosecution to prove the case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;

ii) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and

iii) that the onus of the prosecution never shifts.

Learned Advocate for the appellant therefore submitted that having regard to these principles, the heavy burden of proving a case beyond reasonable doubt could not be discharged by the prosecution for the above said reasons and when case is not proved beyond reasonable doubt, the question of defence and raising presumption against the accused appellant would not arise. It is, therefore, submitted that the Appeal be allowed.

23 After hearing learned counsels for the parties in detail, this Court has undertaken a complete and comprehensive appreciation of all vital feature of the case and the entire evidence on record with reference to the broad and reasonable probabilities of the case and the contentions raised by both the sides are taken into

consideration.

24 Having regard to the marathon submissions made by both the learned counsels for the parties, on facts of the case as well as on the point of law involved, it would not be out of place to refer to cardinal principles of appreciation of evidence in criminal trials as envisaged by the Apex Court long back in the matter of BHARWADA BHOGINBHAI HIRJIBHAI vs STATE OF GUJARAT, as reported in AIR 1983, 753. The principles for appreciation of evidence in the said case came to be settled by the Apex Court in trial against the accused in a rape case but the principles apply as well to all trials. In para-5, the Apex Court observed and settled following principles for appreciation of evidence without entering into re-appraisal or re-appreciation of the evidence in the context of minor discrepancies. The principles laid down are as under :

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed an the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be

attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5)In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is

liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

25 While re-appreciating the evidence on record with reference to the contentions raised, the court is required to exercise due diligence though the standard of such exercise would be of an exercise by prudent person. The Court must bear in mind the set up and the circumstances in which the crime is committed, the quality of evidence, nature and temperament of the witnesses, the level of understanding and power of perception and examination of individual witness and probability in ordinary course of nature about the act complained of as might have been witnessed by the witnesses. The endeavour must be to find out the truth from the

evidence on record. At the same time, it must not be forgotten that there cannot be a prosecution case with a cast iron perfection in all respects and reason being that the perfection to that degree in ordinary course of human life is an Utopian thought. However, nevertheless, obligations lies upon the courts to analyze, sift and assess the evidence on record, with reference to trustworthiness and truthfulness of the prosecution case, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the evidence without being obsessed by an air of total suspicion about the case of the prosecution. What is to be insisted upon is simpliciter proof emanating from the circumstances of the case and a ring of truth. The contradictions, infirmities, it might have been pointed out in prosecution case must be assessed at the yardsticks of probabilities of the existence of a fact or not. Unless, infirmities and contradictions are of such nature as to undermine the substratum of the evidence and found to be tainted to the core of the prosecution case, over emphasis may not be applied to such contradictions and infirmities. To judge the credibility of the evidence of witness, one has to look to his evidence, and if any discrepancies found in the ocular account of the witnesses not affecting the root of the say of the witness, the witness may not be labelled as not credit worthy. At the same time, seeking rule of corroboration, mathematical niceties may not be expected. The account of the witnesses must be read as a whole and once the impression is formed that the account contains ring of

truth, jettisoning whole of the evidence would amount to doing injustice to a reliable and honest witness. Even honest and truthful witnesses may differ in some details, which may not be related to the main cause of prosecution case, and their evidence therefore must be appreciated keeping in mind the power of observation, retention and reproduction of the same by the witness to be judged by human standard. The attending circumstances of the case on and the probabilities must be judged keeping in mind the human conduct and occurring of the evidents in ordinary course of nature.

26 True it is that, anti corruption cases must be viewed seriously. This seriousness is two sides of a coin as the complaint may attempt to frame honest government servants for their selfish purposes while other side of the coin must also be viewed seriously when government servant is found demanding bribe for doing or for not doing certain work. This is clear from the objects, reasons for enacting of the statute in this respect. 1947 Act came to be enacted in the year this Country was declared and achieved Independence.

27 Coming to the facts of the present case and assessing the evidence independently, it is necessary to look upon how the events have taken place and what influence, attending circumstances have cast upon those events. This can be judged from the evidence recorded and submissions made. The facts of the case and the evidence recorded is mentioned in this judgment in

detail here-in-above.

28 In respect of grievance of complainant about demand of bribe by the appellant, two dates appears to be very material i.e. 7th of October 1985 and 11th of October, 1985. The events took thereafter on 16th of October, 1985 in respect of trap laid and acceptance of demand of bribery may be assessed hereinafter. The evidence as to whether complainant visited appellant on 7th of October and 11th of October, 1985 in shape of deposition of the complainant, is found at Exhibit – 11. In para-3 of his deposition, complainant in uncertain terms submitted that in departmental proceedings, in which he was dismissed, ultimate authority i.e. Government, exonerated him vide order dated 01st of October, 1985. He further deposes that he received that order directly from the Government. It must be noted that complainant further submits that in pursuance of that order, he visited DSP Office and the appellant at Sheet Branch. The say of the complainant of his visit to the appellant on 7th of October, 1985, is corroborated by documentary evidence i.e. Exhibit – 13, Order passed by the disciplinary authority on 11th of October, 1985, posting the complainant as Constable at Dhanpur Police Station and further vide Exhibit – 18 which is an office note, placed by the appellant, on 7th of October, 1985, to the DSP proposing to post him as Constable at Dhanpur Police Station, in pursuance of the orders passed by the Government and it was further proposed categorically by the appellant that the

calculation and set off of the leave period as against the absence of the complainant from duty on account of his dismissal, shall be placed later on. When these aspects are taken into consideration, there is no reason to disbelieve that the complainant visited appellant on 7th of October, 1985. This say of complainant in his deposition could not be shaken in cross examination as to come to the conclusion that the complainant did not visit the appellant at Sheet Branch on 7th of October, 1985. Complainant further states in his deposition that on that day the appellant demanded bribe of Rs. 500/- for issuance of posting as Head Constable after adjusting leave period towards the absence of the complainant on account of his dismissal. The facts of this demand is again corroborated by a note placed by the appellant to the DSP on 7th of October, 1985 wherein the appellant has proposed that the orders for the adjustment of leave and proposal for the same would be put thereafter. This hand written note is on record at Exhibit-18. At this juncture, what is required to be decided is whether the accused - appellant was in position to oblige the complainant. Exhibit – 18 hand written note again corroborates the prosecution case in this regard. Not only that, it clearly appears from Exhibit - 18 that it was for the appellant and appellant only to propose the adjustment of leaves for the absence of the complainant from duty. It must be noted that till 16th of October, 1985, no such proposal was made to the disciplinary authority. Now in this respect, it is also necessary to look to Exhibit – 13, which is an order dated 11th of

October, 1985 posting complainant as Constable at Dhanpur Police Station. It is categorically mentioned that in revisional jurisdiction, the State Government directed that the period of absence from duty of the complainant was to be adjusted towards the leave at his credit. With this, if we consider the established factual position in respect of other departmental proceedings, in which the complainant was reverted to inferior post of Constable for six months, and if the orders passed by the Government as referred in Exhibit-13, it comes to that if the complainant at the relevant juncture had leave at his credit for the period of six months or more than six months, he was required to be posted as Head Constable because leave period which was to be substituted in place of absence of duty of the complainant was required, for all purpose, to be reckoned as duty period. But this calculation was required to be done and if leaves at the credit of the appellant exceeded six months, he was entitled to be posted as Head Constable and not as Constable. It is clear from the evidence of PW-6 Narendra Parsottam Patel that this work was to be done by the appellant and appellant only. Disciplinary authority i.e. DSP may be final authority to decide the issue, but as it appears from Exhibit – 18, Disciplinary authority did not take decision on his own, and as per the office procedure, decision was to be taken on proposal and notes to be put up by the office, and the concerned person to put up the note in this respect was the appellant. When this circumstance is weighed with the say of the appellant about the demand made on 7th of

October, 1985 by the appellant, there is no reason as to why this say of the complainant should not be disbelieved. The same is the case that in respect of visit of complainant to DSP Office on 11th of October, 1985 when it is stated that the appellant reiterated his demand for the bribe. It is to be noted that it is proved by the evidence of the prosecution through PW-3 Vijaysinh Amarsinh Solanki that on 11th of October, 1995, the complainant did visit the office of the DSP and he was given envelopes of the orders at Exhibit – 13. The reasoning of the trial court on this aspect cannot be made exceptionable that these envelopes were given to the complainant by the Registry Clerk because the orders contained posting of the complainant as Constable at Dhanpur Police Station. The reasoning of the Trial Court in this respect cannot be found fault with when it is proved that on 12th of October, 1985, complainant resumed his duty and knew that he was posted as Constable, this source of knowledge could only be appellant and appellant. This is so because Vijaysinh Amarsinh Solanki - PW-3 who is Registry Clerk deposed that he had received closed envelopes which he handed over personally to the complainant in the DSP Office. It was only about the postings of the complainant. This is invariably led to establish a fact that on 11th of October, 1985, the complainant did visit appellant and considering overall evidence of the complainant as well as documentary evidence, as above referred, it is also established that the appellant reiterated his demand for bribery either for posting the complainant as Head Constable or at least for

early such orders to be issued. This being so and when this evidence is appreciated, as aforesaid, it becomes clear that so far as the demand made by the appellant on 7th and 11th of October, 1985 is concerned, prosecution is able to prove its case. In this respect, the evidence of the complainant is corroborated by the above documentary evidence are available.

29 Now, coming to the second part of the episode and weighing the evidence about the demand and acceptance of bribe amount, in his deposition, complainant in categorical terms submitted that he and panch No.1 visited the appellant and he asked when his orders for Head Constable were to be issued. The appellant reacted and stated whether the complainant had brought the amount. Complainant further stated in his deposition that he stated that he had brought the money, put out the muddamal notes, which the appellant had taken by his right hand and put the same in his bush shirt pocket. This say of the complainant is corroborated by panch No.1 in his deposition. Panch No.1 stated that the complainant demanded orders for his posting and stated that give my orders. At that time, the appellant told to the complainant that complainant would get his orders, but had he brought amount of bribe. The panch No.1 in his deposition further stated that immediately the complainant took out the muddamal notes and gave to the appellant, who in turn, took it by his left hand and put it on the shirt pocket. This was again corroborated

by the evidence of Investigating Officer. So far as this evidence of demand at the time of trap is concerned, could not be shaken in cross-examination so as to disbelieve that this event could never have taken place in ordinary course of nature. Though the corroboration by the panch expressing in his own language in deposition by stating that appellant told the complainant whether complainant had brought bribe amount, is impeached by learned counsel for the appellant, but the evidence is to be read in broad spectrum of the prosecution case. This is the way of expression of the witness before the court. In any case, using this version by panch No.1 would not lead to the conclusion or any inference that appellant had not made any demand at that time. The demand by the appellant might have been made in some different words, perhaps, as used by the complainant, but the panch No.1 reproduces in his own language as it is clear that right from the beginning, the panch was aware that the trap is to be laid for the bribe amount. Using this version by the panch No.1 in his deposition, would not affect the prosecution case as to render the prosecution case improbable as to demand by the appellant at the time of raid. So, there is reliable evidence of the prosecution so far as demand of bribery by the appellant at the time of trap is concerned.

30 Coming to the event of recovery, it is submitted that PI Ranganekar as soon as he entered, started searching the appellant.

True, the evidence is read in isolation and not as a whole, it may give such impression. This fact that how the recovery was effected, can be seen from firstly panchnama. Panchnama – Exhibit 35 is proved document. It is revealed that as soon as the signal was made, the raiding party members reached in the room, asked the complainant and panch No.1 about muddamal amount, where they said that, the complainant as per the demand of the appellant, delivered the amount of Rs. 500/- to the appellant and he had placed that amount in his shirt pocket. Thereafter, Police Sub-Inspector Mr.Patel executed an experiment of ultra violet lamp and hands of all, except complainant and the accused, were seen, while the hands of the accused and the complainant were found tainted with anthracene powder and thereafter PI Ranganekar searched the shirt pocket of the appellant, from where they did not find muddamal notes, but a wallet was found. Thereafter, since the amount was not found in the shirt pocket of the appellant, panch No. 1 was instructed by PI Ranganekar to search pant pockets of the appellant and from the right front pocket of the pant, muddamal notes were found. Now, in this respect, if the evidence of the complainant - PW-1 is seen, he stated that when Ranganekar entered in the room, he warned the appellant to remain in same situation and searched the shirt pocket. This portion of evidence is highlighted in the submissions made, but reading further the evidence of complainant, he categorically stated that PI Patel examined the hands of all, except complainant and appellant. In

cross-examination, the complainant might have stated that Ranganekar examined the shirt pocket first of the appellant, but in para – 22 in cross-examination, very categorically it is stated that except the complainant and appellant, hands of everybody including Ranganekar were seen in ultra violet lamp and nothing was found. Now, reading the deposition of the complainant as a whole, it clearly appears that ultra violet lamp experiment was executed before PI Ranganekar examined the shirt pocket of the appellant. In para-20 of this deposition, complainant has further stated that though Ranganekar had not asked him where the appellant had placed the amount of bribe, but he himself had informed to Ranganekar that the amount which he gave to the appellant, appellant put the said amount in his bush shirt. Thereafter, Ranganekar searched the shirt pocket of the appellant. This prosecution case is supported by panch witness wherein he stated that as soon as PI Ranganekar entered in the room, he inquired the name of the appellant and thereafter ultra violet lamp experiment was done. Thereafter, Ranganekar searched the shirt pocket of the appellant. Now this case of the prosecution on account of sequence of events stated by the complainant might have disturbed, cannot be disbelieved nor it could be said that PI Ranganekar straightaway started searching shirt pocket of the appellant and therefor this was a false trap and Ranganekar acted over enthusiastically. This evidence of the prosecution would be considered as per the principle above laid

down for appreciation of evidence and having considered as such, it leaves no room of doubt that the trap was arranged as stated by the witnesses.

31 Dealing with the contentions raised , from the above discussion, it is clear that the appellant was in position to oblige the complainant for putting up proposal for the posting of Head Constable. The facts of the case in the matter of STATE v. NARASIMHACHARY, as reported in 2006 Cri. LJ 518, are different from the facts of this case. It is to be noted that in the said case before the Supreme Court, the demand was alleged to have made even after the work was done, for which the grievance was made about the bribery. While in the present case Exhibit -13 makes it clear that the leave account of the complainant was to be adjusted against the absence of the duty of the complainant. It was not the case that after reinstatement, in any case, first the complainant was required to serve as Constable for six months. This is clear from Exhibit-13 as that was not the direction of the Government while reinstating the complainant. There was a scope for adjustment and as said above, if the period of leave at the credit of the complainant exceeded for more six months, he would have been considered to have been on duty as Constable for these six months and he was required to be posted as Head Constable. True it is that, the appellant is a forwarding Clerk, but Exhibit – 18, makes it clear that unless the appellant makes proposal,

departmental authority would not have taken decision on his own. This is so because the files of the concerned employees which were with the concerned clerk will have to be seen and a proposal was required to be made. Only because the Wings of Registry Clerk and appellant are different, it cannot be said that the complainant did not visit the appellant on 11th of October, 1985. As appreciated above, with reference to the attending circumstances, it must be inferred that the complainant visited the appellant on 11th of October, 1985. Stress is also made on the deposition of Peon PW-5 Vinodkumar Bariya, who in cross-examination, stated that he did not see the complainant visiting the office of the appellant before 16th of October, 1985. This evidence is to be weighed against the other evidence of the prosecution. It might have happened that Peon would not have seen the complainant coming to the office, but that does not conclusively prove that the complainant did not visit the office on those two days. In support of this fact, learned APP Mr. Kogje rightly argued that on 11th of October, 1985, complainant, as per the order of reinstatement, on 12th he resumed at his posting. On 14th and 15th of October, 1985, he came to Godhra and filed complaint on 16th. It must be borne in mind that the demand of bribery by the appellant was to be fulfilled on 16th of October, 1985. In these circumstances, the complaint filed on 16th of October, could not be said to have been filed with inordinate delay, affecting the prosecution case. As regards, credibility of the panch witnesses, it must be stated that the credibility of the

witnesses must be judged from what he deposes before the court. Only because PSI Patel availed services of panchas earlier from ART Office, the independence of panchas from that office second time would no stretch of reasoning would be lost especially when the evidence of PW-7 on close scrutiny appears to be beyond board. There is nothing in his evidence to infer that he was specially selected to assist the Investigating Officer in laying a false trap. It would have been open to argue for the defence even if the panchas would have been selected from any other offices, that the panchas were selected from particular office. In anti corruption cases, ordinarily, panchas are selected from the government offices. In this process, it may happen that from the same office, panchas might be selected twice, but that circumstance itself cannot be led to an inference that panchas were not independently selected. Even if RTO Office is situated near the office of PSI Patel, would not have made any difference because nothing could be shown or nothing could be brought about on the record that these panchas were selected for the particular purpose. In the case relied upon by the learned Advocate for the appellant in the matter of THE STATE OF GUJARAT vs. BHAVJIDAN CHANDIDAN CHARAN, as reported in 1984 GLH 572, there were special circumstances that from the Irrigation Department the same I.O. selected panchas thrice and further circumstance which led the court to disbelieve panchas was that the Head of the said Irrigation Department was under scrutiny of the said I.O. before whom an inquiry was pending of the Head of

the Irrigation Department. True it is that, the selection of panchas is vital issue in trial under the Prevention of Corruption Act, but before labelling a witness to be discreditworthy, something should be more shown than availing of the service of panchas second time from the same Department. True it is that, PSI Patel was working in some other Department i.e. ACB Scarcity Branch, it is clear that the Director of the Department had instructed him to assist PI Ranganekar, whenever it was necessary. Whether PSI Patel was present in the office of PI Ranganekar or was he summoned from this office, is not a material circumstances, as to disbelieve the whole of the prosecution case. What is insisted upon is to scrutinize the evidence recorded and it is found that the evidence is tainted, the same could be discarded. The evidence of PI Ranganekar as well as evidence of PSI Patel was scanned carefully and nothing could be brought about that their evidence was tainted. The reason by which PI Ranganekar was enthusiastic about the enquiry of the appellant, remains in the realm of mere suggestions. It must be noted that what is asked is PI Ranganekar demanded Rs. 5,000/- from the appellant after filing of the report by him in respect of his inquiry. This itself is improbable. Had Ranganekar wanted to harass the appellant, he would have demanded the amount before filing any report. In any case, nothing is coming on record to show that there was a grudge harboured by Ranganekar against the appellant. The amount which was presented by PI Ranganekar also is not render his role suspicious especially in view of the

decision of the Apex Court in the matter of STATEOF MAHARASHTRA vs. NARSINGRAO GANGARAM PIMPLE , as reported in AIR 1984 SC 63. There may be persons who may not have bribe money for laying a trap. In these circumstances, it would be preposterous to come to the conclusion that in absence of such money, the trap could not be laid and a serious offence could not be detected. Volunteering by PI to deal with a crime would not at all cast any suspicion as to have acted over enthusiastically. In his examination-in-chief, it has been categorically stated by PI Ranganekar that he presented that amount from the account of his office. The say could not be shaken in cross-examination. True that, all other witnesses stating that the amount was produced by PI Ranganekar, but it must be noted that it is only Ranganekar, who knew that the amount was produced from the account of his office and not all other witnesses. There cannot be evidence in support of his say except his statement on oath which is subjected to cross-examination. There cannot be any hesitation to accept that the amount which was produced by Ranganekar was from the account of his office. Particularly in absence of cross-examination on this aspect, in any case, this fact would not cast any suspicious role on the part of the Investigating Officer. True it is that, as established by the Apex Court in the matter of RABINDRA KUMAR DEY vs. STATE OF ORISSA, as reported in AIR 1977 SC 170, it is for the prosecution to prove its case and this burden never shifts. In this respect, it must be viewed that what is a proof beyond

reasonable doubt. Proof beyond reasonable doubt cannot be construed to be that impossibility which prosecution can be asked to meet. It is not the rule of law that prosecution has to meet with all and every hypothesis of the defence case. In the matter of RAMKANT RAI vs. MADAN RAI AND OTHERS, as reported in (2003) 12 SCC 395 in respect of what amounts to proof beyond reasonable doubt, the Apex Court observed in paras 23, 24 and 25 as under :

> “ 23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to 'proof' is an exercise particular to each case. Referring to (sic) of probability amounts to 'proof' is an exercise, the interdependence of evidence and the confirmation of one piece of evidence by another, a learned author says : [See "The Mathematics of Proof II": Glanville Williams : Criminal Law Review, 1979, by Sweet and Maxwell, p.340 (342)].
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> "The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and

the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.

24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

> 25. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of the administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in State of UP v. Krishna Gopal. “

32 Thus, uninformed legitimisation of trivialities would make a mockery of the administration of criminal justice while protecting the accused by criminal process. The proof beyond reasonable doubt is mere guideline and not fetish. Likewise, in the matter of SUCHA SINGH vs. STATE OF PUNJAB, as reported in (2003) 7 SCC, 643, the Supreme Court held that reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. In para – 20, the Apex Court observed as under :

“20 Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social science. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See Gurbachan Singh v. Satpal Singh). A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. (See Inder Singh v. State (Delhi Admn.). Vague hunches cannot take the place of judicial evaluation.

“A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties.” (Per Viscount Simon in Stirland v. Director of Public Prosecution quoted in State of U.P. vs. Anil Singh (SCC p 692,

para 17).

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth."

33 Therefore, the prosecution is able to prove its case beyond reasonable doubt, considering the above principles as laid down by the Apex Court. True it is that, unless the prosecution proves its case, defence would not be called to prove innocence of accused but if the case is proved beyond reasonable doubt, the presumption as envisaged by Section 4(1) of the Prevention of Corruption Act, 1947 arises as in this case the acceptance of money is amply proved by the prosecution evidence and the circumstances in the present case. The defence of the accused is required to be scrutinized. Though inconsistent defences are taken by the accused for which he is entitled, but the fact remains that the trap was laid is an admitted fact. In the further statement under Section 313 of the Cr. P.C., the accused submits that the raiding party surrounded him and on account of this tension he could not know what was going on and he was falsely implicated in the case by Mr. Ranganekar. In suggestions made in cross-examination of witnesses, it is submitted that the Ranganekar thrusts the amount in the pant pocket of the accused. The other defence which was suggested was that the complainant first tried to place the amount

in shirt pocket of the appellant, but appellant refused and stood up and, therefore, he (complainant) thrust that amount in right front pant pocket. The probability of this defence depends upon the establishment of the prosecution case. When prosecution is successful to establish that in certain manner, the amount was recovered from the appellant and anthracene powder marks were found from his pant pocket and shirt pocket, it was then the duty of the appellant to prove and probabilize his defence that how those marks came on his shirt pocket and pant pocket. True that, the degree of proof would be of preponderance of probability but that evidence is not found from the appellant side. Had the raiding party including complainant and PI intended to execute a false and fabricated raid, it was very easy for them to show that the amount was recovered from one of the pockets of the clothes worn on by the accused - appellant. It was not necessary to show that wallet was marked with anthracene powder. It was not necessary to show that shirt pocket was found with anthracene powder. It was not necessary to show that the pant pocket was found with anthracene powder. Recovery could falsely be shown from shirt pocket. The marks found from the wallet and both the pockets, speak of natural events taken place at the relevant juncture, corroborating the say of the complainant and the challenge that first the appellant attempted to put the bribe amount in his shirt pocket and as the accused stood up refusing to accept, complainant thrusted the amount in his pant pocket is baseless. The simplicity and natural

manner in which panch No.1 has deposed his trustworthiness must be considered above board and corroborating the evidence of complainant. Learned advocate for the appellant magnified the fact of finding anthracene powder marks only on the button of the wallet which was recovered from the shirt pocket of the appellant. Nothing turns out from this argument though referring to the evidence of some witnesses, it is stated that if the amount is kept in shirt pocket by the appellant, then how only button of the wallet was found with the marks of anthracene powder. It must be stated that in this respect the case of prosecution, as disclosed in panchnama - Exhibit 35, must be seen which is corroborated by panchas. In panchnama it has been categorically mentioned that the side of the wallet which contained button found with the marks of anthracene powder and referring by the witnesses, this fact as finding of anthracene powder marks on the button of wallet, would not make any difference. Above all, it must not be lost sight of that the seizure memo of the notes recovered from the accused was prepared and original was given to the accused and he signed in the office copy, which is produced at Exhibit – 39. No explanation is found in respect of this seizure memo produced at Exhibit 39. On the contrary, the accused in his further statement under Section - 313 of the Criminal Procedure Code, stated that the fact of signing seizure memo by him was correct. This is one more circumstance to probabilise the prosecution case.

34 Learned Advocate for the appellant submitted that the decisions of the Trial Court is based upon presumption without any concrete evidence. In this respect it is necessary to refer to the decisions of the Apex Court in the matter of STATE OF A.P. vs. V. VASUDEVA RAO, as reported in (2004) 9 SCC 319 and in the matter of T. SHANKAR PRASAD vs. STATE OF A.P., as reported in (2004) 3 SCC 753. In these decisions, the Apex Court observed that the court is entitled to presume the existence of certain facts from the proved circumstances. As discussed above, in this case, in respect of demand, visits of complainant to the appellant on both the days, the events took place at the time of raid, there is concrete proof, which could not be shaken in cross-examination or it may be said that appreciating this evidence by cardinal principles of appreciation of evidence in criminal trial, stands the test of probability. If this fact exists, the court is entitled to presume that certain facts did exist. Not only under Section 4(1) of the Prevention of Corruption Act, 1947, but even under Section 114 of the Evidence Act, court is entitled to presume existence of certain facts. Those facts might have been inferred from proven facts when this presumption arises unless controverted in trial, results into the conclusions and that appears to be the endeavour on the part of the trial court and, therefore, no fault can be found with the reasoning given by the Trial Court.

35 In this view of matter, this Appeal stands dismissed. Bail

bonds of the appellant stands cancelled. The appellant is given time for 10 weeks for surrendering before the trial court and for filing proceedings before higher forum.

(J. R. VORA, J.)

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